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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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SEP 30 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation	))))))))	MM Docket No. 92-266

To: The Commission

COMMENTS IN RESPONSE TO THE THIRD NOTICE OF PROPOSED RULEMAKING

FALCON CABLE TV
INSIGHT COMMUNICATIONS
LENFEST COMMUNICATIONS, INC.
MOUNT VERNON CABLEVISION INC.
NASHOBA COMMUNICATIONS
NEW HERITAGE ASSOCIATES
PENNSYLVANIA CABLE TELEVISION ASSOCIATION
PRESTIGE CABLE TV
STAR CABLE ASSOCIATES
WHITCOM INVESTMENT COMPANY

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Date: September 30, 1993

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Falcon Cable TV, Insight Communications, Lenfest Communications, Inc., Mount Vernon Cablevision Inc., Nashoba Communications, New Heritage Associates, Pennsylvania Cable Television Association, Prestige Cable TV, Star Cable Associates, Whitcom Investment Company("Commenters"), by their attorneys, hereby submit their comments in response to the Commission's Third Further Notice of Proposed Rulemaking ("Third Notice").[1] The Third Notice seeks comment on four issues: (1) the appropriate methodology for adjusting rates when channels are added to or deleted from a regulated tier on a "going-forward"

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[1] Implementation of Rate Regulation Sections of the Cable Television Consumer Protection and Competition Act of 1992, First Order on Reconsideration, Second Report and Order and Third Further Notice of Proposed Rulemaking, MM Dkt. No. 92-266 (rel. Aug. 27, 1993).

basis; (2) whether "below benchmark" cable operators who initiated rebuilds immediately prior to regulation should be permitted to raise their rates to the benchmark level; (3) whether cable operators may elect either the benchmark or the cost-of-service approach for different tiers of regulated service; and (4) whether and how external treatment should be accorded the cost of upgrades undertaken after the initial date of regulation.

SUMMARY OF ARGUMENT

Commenters believe that the going-forward rate adjustment methodology preferred by the Commission is the best of the approaches discussed by the Commission. However, the Commission's adherence to a tier-neutral calculation can lead to anomalous results. Thus, the Commission's formula, if applied on a tier-neutral basis, will remove any incentive to add new channels of service to a regulated tier in many cases. The solution is for the Commission to adopt a tier-specific approach instead of a tier-neutral approach. This would result in an adjustment to the rate charged for the affected tier only. In addition, Commenters submit that a cable operator should not receive less of a rate increase than it would have been able to calculate into its September 1 benchmark rate for an additional channel (minus actual programming cost for the new channel). This safety net would apply only in a small number of cases, but it preserves the equity of the Commission's approach.

Commenters support the Commission's proposal to permit cable operators whose rates are below the benchmark to raise their rates to the benchmark in order to recover the cost of upgrades which were begun prior to the inception of rate regulation. Although this is no guarantee that such costs will, in fact, be recovered, it is a step in the right direction. As for the proper amortization period, Commenters submit that a typical franchise term or the useful life of the new plant are both too lengthy a timeframe. Most cable plant is replaced before the end of its useful life because of obsolescence, regulatory requirements, or other imperatives. More appropriate periods would be a percentage of useful life or the weighted average life of the cable operator's debt. These reflect lender expectations of payback and more accurately measure the investment life of cable plant.

There is no persuasive reason to require cable operators to elect the same rate regulation methodology for all regulated services. The gaming of the system, which seems to form the basis for the Commission's tentative conclusion, is simply not a real possibility. If the Commission adopts a policy of requiring a uniform choice, many more cable operators will choose cost-of-service for all tiers because they will lose money if all tiers must comply with the benchmarks. This result would run counter to the Cable Act's directive to the Commission "to seek to reduce administrative burdens..." on all parties. If, for whatever reason, a cable operator chooses to use the cost-of-service methodology in both the local and federal forums, Commenters suggest that the cable operator should have the option of requesting a unified proceeding at the Commission. This would be more efficient and would avoid the disparate result problem. Finally, Commenters concur that cable operators should be able to periodically switch between benchmarking and cost-of-service even if uniform elections are required.

Commenters agree that external cost treatment should be given for the cost of upgrades required by local franchising authorities. However, there are other required upgrades which are not mandated in the franchise but which should receive similar treatment. At the local level there are such things as zoning law requirements that existing overhead plant be placed underground and plant relocation mandates resulting from road widening projects. The equities for giving the cost of these expenditures external treatment are just as compelling as for franchise required upgrades. Federal regulations also contain requirements which can mandate plant upgrades. These include compliance with the Commission's new technical standards and the anti-buy-through rules. External treatment is not only fair in these circumstances, it also contributes to the incentive to modernize plant and offer new services.

ARGUMENT

I. GOING-FORWARD RATE ADJUSTMENTS SHOULD BE BASED ON TIER-SPECIFIC DATA, NOT TIER-NEUTRALITY.

The Commission's initial Report and Order in this proceeding left for future resolution the important question of how regulated rates are to be adjusted when channels are added or deleted on a "going-forward" basis.[2] In the Third Notice the Commission asks for comment on this issue. After discussing several approaches to this issue in a disapproving manner, the Commission has tentatively decided to adopt a going-forward methodology under which changes in programming costs resulting from the addition or deletion of channels would be factored into a new rate. Specifically, under the Commission's preferred going-forward methodology, a system would start with its initial Line 600 maximum permitted rate per channel and then deduct the average per channel programming cost for the affected tier. The system would then further adjust the Line 600 rate by decreasing (or increasing) it by a factor equal to the change in the benchmark cable rates applicable to the system before and after the addition (or deletion) of the new channel(s). Finally, the system would add back to the adjusted Line 600 rate an amount equal to the average per channel programming cost, recalculated to reflect the cost of the added (or deleted) channel(s).

Although this approach is better than the other two approaches discussed by the Commission, certain anomalous consequences flow from the Commission's continued use in its rate regulation rules of a "tier-neutral" concept. Commenters believe that tier-neutrality is not legally required, particularly in the context of evaluating changes in rates due to addition or

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[2] Report and Order in MM Docket No. 92-266, FCC 93-177, 72 RR 2d 733 (1993).

deletion of services, nor is it a wise choice. Therefore, Commenters submit that the Commission's going-forward methodology should instead apply on a "tier-specific" basis. Thus, the rate adjustment would apply only to the tier containing the increase or decrease in service.

One adverse, and Commenters believe unintended, consequence of the Commission's proposal is that application of the going-forward approach on a tier-neutral basis can cause a cable operator to gain no revenue or even to suffer a net loss in revenue if it adds a channel to a regulated tier. This is because of the "curve" in the benchmark table. For example, take a cable system with a 20 channel basic tier (comprised of broadcast and PEG access services) and a 15 channel expanded tier (comprised of satellite services). Assume that 100 percent of the system's 10,000 subscribers take basic and 60 percent (or 6,000) of the subscribers also take the expanded tier. Assume further that, under the Commission's proposed going-forward formula, the addition of a new satellite service causes the system's maximum permitted per channel rate to drop from .60 cents to .588 cents. The allowable rate for the expanded service tier increases from \$9.00 (15 x .60) to \$9.41 (16 x .588). The allowable rate for the basic tier decreases from \$12.00 (20 x .60) to \$11.76 (20 x .588). The net result is a virtual revenue wash:

Revenue

Before				After			
10,000 x	$12.00 =	$120,000		10,000 x	$11.76 =	$117,600
6,000 x	9.00 =	54,000		6,000 x	9.41 =	56,460
Total		$174,000				$174,060

Another adverse result is that applying the Commission's approach on a tier-neutral basis can cause rates to go up for subscribers whose service level has not changed. For example, if the addition of a new channel to the expanded tier of the system described above caused its maximum permitted rate to increase from .60 to .63 (a situation which could arise if the newly added channel was expensive in relation to existing programming costs), the rate for basic service would rise from $12.00 to $12.60, even though the level of service provided basic-only subscribers will remain unchanged.

Exactly what the consequences may be for an individual cable system will vary depending upon the number of channels on the tier to which a channel or channels are added relative to the overall number of regulated channels and the subscribers to the affected tier relative to the overall number of subscribers on the system. The bottom line, however, is that the Commission's formula, if applied on a tier-neutral basis, in many cases will remove any incentive for adding new channels to a regulated service.

In addition to the rate peculiarities mentioned above, there are public relations problems with the use of the tier-neutral concept in applying the Commission's going-forward methodology.

Thus, in the example set forth above, the addition of a channel to an expanded tier would place the cable operator in the position of raising rates for subscribers who take only the basic service and whose service level has not changed. Conversely, if the addition of a channel to the basic service tier causes the maximum permitted rate per channel to decrease, basic-only subscribers could see their total bills increase by a larger amount than expanded basic subscribers even though both will have received the same change in service.

Finally, these anomalies also cause problems with the implementation and enforcement of rate changes. As described above, the addition of a channel to an expanded tier can result in a price increase for the unchanged basic tier as well. A cable system can increase its tier rate on 30 days notice and the rate is only subject to Commission review upon complaint. Basic rate changes, however, cannot be implemented until the new rate has been approved by local officials if the franchising authority has been certified by the Commission. This process could take months. Until the increase in the basic tier rate is implemented, the cable system could be losing money. The alternative would be to await a decision on the proposed rate increase before adding the channel, a result which is contrary to the public interest. Therefore, if the Commission adopts the proposed going-forward formula, it should preempt any requirement to obtain local approval for adjustments to basic service rates necessitated by the addition or deletion of services from a tier of cable programming services. At a bare minimum, cable operators should be able to put such adjustments in place upon 30 days notice, subject to subsequent review by local franchising authorities.

Thus, as demonstrated above, the use of a tier-neutral approach in applying the Commission's going-forward methodology has a number of financial, practical and public relations problems. Commenters suggest that the Commission need not use tier-neutrality for implementing a going-forward methodology. Although it is true that the Commission used tier-neutrality in its initial benchmark rate regulation, departure from tier-neutrality in the going-forward rate change methodology is consistent with changes in the permitted charges per channel allowed for the reflection of external costs.[3] Thus, tier-neutrality will not be preserved in the future as a natural consequence of the regulations already adopted by the Commission. Just as an increase in the cost of programming offered on, for example, the expanded tier, should not affect the rates charged for the basic tier, it should also be true that an increase (or decrease) in the number of channels offered on a particular tier should not affect the rate for other tiers. A tier-specific approach would avoid all of these problems and still accomplish the Commission's goal in this proceeding. In particular, the Commission could retain its methodology which requires <u>initial</u> rates to be evaluated on a tier-neutral basis, while recognizing

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[3]<u>Report and Order</u>, ¶ 197, n.501.

that future changes should account for programming costs incurred on the affected service tier. Therefore, the Commission should modify its going-forward approach to utilize a tier-specific basis since that will prevent the anomalies noted above from affecting the integrity of the regulatory scheme.

Commenters suggest one further refinement to the Commission's methodology. Many cable operators postponed the addition of new services in 1993 because there was a rate freeze, the cost-of-service rules were unknown and no going-forward rate adjustment methodology had been adopted. In the face of this uncertainty, prudence often dictated the avoidance of new expenses. It would indeed be inequitable if a cable operator netted less of a revenue gain under the going-forward methodology than if the new service had been added prior to September 1, 1993. Commenters believe that such circumstances will be unusual, but they will exist.[4] Therefore, Commenters suggest that the rate adjustment under the going-forward methodology have a safety net consisting of the net new service benchmark revenue gain less the actual programming cost of the new service. For example, assume that the proposed methodology gives the cable operator a net increase of 15 cents per channel. Now assume that it would have netted 39 cents for that channel under the benchmarks (e.g., 20 channels x 60 cents = $12.00 versus 21 channels x 59 cents = $12.39) and the programming costs 20 cents.

[4]This could happen to cable systems with a single regulated service, or to multi-tier cable systems adding a low or no-cost channel in a tier-neutral environment.

19 cents (39-20), not 15, would be the permitted rate adjustment. This is an apples-to-apples comparison which would provide fair treatment in these situations.[5]

II. CABLE OPERATORS WHO HAVE UNDERTAKEN UPGRADES PRIOR TO REGULATION SHOULD BE ABLE TO RAISE RATES TO THE BENCHMARK TO RECOVER THE COSTS OF SUCH UPGRADES.

As the Third Notice points out, "some cable operators with rates below benchmark levels may have initiated or completed system upgrades shortly before rate regulation," and "the initiation of rate regulation could prevent systems with rates below benchmark levels from raising rates to recover such upgrade costs."[6] These systems were caught in the rate freeze imposed by the Commission on April 5, 1993.[7] As the Commission notes, such cable operators may have foregone needed post-upgrade rate adjustments that would have brought the system's rates to the benchmark, "to avoid subjecting subscribers to immediately sharp rate increases in anticipation of a series of more gradual rate changes over time."[8]

Although cable operators could initiate cost-of-service showings to try to recover the costs of upgrades undertaken

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[5]This ensures that the going-forward methodology, which takes programming costs into consideration, will not produce a lower result than the benchmark methodology's Worksheet 5 calculation, which does not consider programming cost.

[6]Third Notice at ¶ 145.

[7]Order in MM Docket No. 92-266, FCC 93-176, 8 FCC Rcd 2921 (1993), clarified in 8 FCC Rcd 2917 (1993), extended to November 15, 1993 in Order, FCC 93-304 (released June 15, 1993), 58 FR 33560 (June 18, 1993).

[8]Id. at n.25.

during this period, the Commission recognizes that significant burdens are involved in such showings.[9] Accordingly, the Commission solicits comment on whether it should adopt a streamlined cost-of-service approach or, alternatively, "whether we should simply permit cable operators that have undertaken upgrades shortly before regulation to raise rates to the benchmark level without any cost showing."[10] The Commenters believe that cable operators in this situation should be able to raise rates to the benchmark level without any cost showing. Only this external cost treatment would give cable operators who upgraded their plant during a period in which they did not know their rates would be subject to a price cap and a freeze a chance to be compensated for their expenditures. Additionally, the Commission has expressed its concern that cost-of-service showings are burdensome to cable operators.[11] As the Commission has stated, cost-of-service showings are "unwieldy and expensive."[12] Even a streamlined cost-of-service requirement would cause tremendous financial and administrative burdens not only to cable operators, but also to the Commission, franchising authorities, and, ultimately, to subscribers.

The Third Notice also asks for information on "the method of pricing that cable operators generally follow after a rebuild,"

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[9] Id.

[10] Third Notice at ¶ 145.

[11] Id.

[12] Report and Order, supra, at ¶ 219.

including the costs involved, the speed at which costs are recovered, the effect on rates, etc.[13] It is the experience of the Commenters that the cost of rebuilds and upgrades are usually recovered gradually to avoid sudden rate spikes. However, due to the rapid pace of advances in cable technology, cable operators are forever playing "catch-up" -- before the costs of a prior upgrade or rebuild can be fully recovered, the system is forced to undertake a new upgrade to keep up with technological changes. Accordingly, cable operators rarely recover their capital costs associated with such improvements.

Therefore, the Commenters request that cable operators be given a reasonable period of time, shorter than the entire franchise term, which can typically run fifteen years, to amortize the cost of an upgrade or rebuild undertaken during the period in question. Nor is the useful life of the upgraded plant a reasonable standard. It is doubtful that the costs would be fully recovered during the useful life of the new plant, because such equipment is often replaced before the end of its useful life.[14] Accordingly, the allowable amortization period should be approximately half of the useful life of such plant components. Alternatively, Commenters suggest that the weighted average life of the cable operator's debt would be a fair amortization period. For a typical cable company this would run about 6 to 8 years, or roughly half the length of a typical franchise. The real

[13] Third Notice at n.254.

[14] See discussion in Section IV, infra.

investment life of cable plant should be the desired write-off period.

Finally, it should be remembered that the amount cable operators would be able to raise their rates to recover the costs associated with prior upgrades would be limited to the applicable benchmark, even if such benchmark results in a recovery of less than the full cost of the upgrade. The Commission has reaffirmed its belief that benchmark rates are reasonable and competitive.[15] Accordingly, if cable operators raise their rates to the benchmark to reflect legitimate upgrade costs not otherwise accounted for, no consumers will be harmed, and no one can seriously claim that such rates would be unreasonable, without attacking the benchmark concept as a whole.

III. ELECTION OF COST-OF-SERVICE AND BENCHMARK METHODOLOGIES FOR DIFFERENT TIERS SHOULD NOT HAVE TO BE THE SAME.

The Commission's rules currently do not clearly indicate whether a cable system which elects one methodology (e.g., benchmark) to justify the rates charged on one of its regulated tiers may elect to use a different methodology (e.g., cost-of-service) to justify the rates charged for another regulated tier. The Commission expresses concern in the Third Notice that cable operators might be able to manipulate or "game" their service offerings to charge higher rates than their costs would justify.[16] Therefore, the Commission has tentatively concluded

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[15]First Order on Reconsideration at ¶¶ 9, 13, 15.

[16]Third Notice at ¶¶ 148-149.

that cable systems should be required to elect either the benchmark approach or the cost-of-service approach as being the one which it will use for all of its regulated tiers.[17] The Commission asks for comment on a number of issues raised by this proposal, including what procedures should be adopted to coordinate federal and local regulation so as to minimize duplication of effort as well as disparate results. The Commission also seeks comment on whether there should be a minimum time period during which a cable system must stay with its election to use one particular rate setting approach, after which the cable operator could switch to the other approach if it so desired.

Commenters disagree that the opportunities for cable operators to "game" the system would be present if cable operators could elect benchmark regulation for one tier of service while undertaking a cost-of-service showing for other tiers. The gaming which would allegedly tempt the cable operator would be to move high cost programming to the tier for which a cost-of-service showing is elected, while leaving low cost programming on a tier subject to benchmark regulations. This is a purely speculative supposition. In the first place, the 1992 Cable Act already "games" the system by requiring cable operators to place low cost programming on the basic tier (e.g., local broadcast stations and PEG channels). In any event, cable operators have no economic incentive to engage in such gaming.

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[17] Id.

The initial Report and Order in this proceeding allows recovery of programming cost increases on either tier without the use of the cost-of-service showings. Since cost-of-service showings will be expensive and lengthy, the process gives cable operators a clear incentive to use the benchmark methodology. In addition, although programming costs are significant, they are a relatively small portion of cable system costs, and the major costs cannot be gamed because of the Commission's accounting and cost allocation rules.

Moreover, since the Commission would apparently like to discourage the extensive use of cost-of-service showings, Commenters point out that a requirement that cable operators elect a uniform rate setting methodology for all tiers could well result in a large increase in the number of cost-of-service showings. Some cable operators offer basic service at a low rate and make their profit on the expanded tiers.[18] Others price a larger basic service at a higher rate and charge less for upper tiers. In either case, the cable operators should be able to use benchmark pricing for the smaller tier and make a reasonable profit on the other tiers. If the Commission adopts a policy of uniformity, many cable operators will be forced to choose cost-of-service for all tiers because they will lose money if all tiers must comply with the benchmarks.

The Cable Act expressly directs the Commission "to seek to reduce administrative burdens on subscribers, cable operators,

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[18]See, 47 U.S.C. § 543(b)(1).

franchising authorities, and the Commission" in prescribing regulations.[19] It is therefore unreasonable for the Commission to impose cost-of-service burdens on cable operators who wish to elect to use the benchmark methodology for only one tier of service since benchmarks are supposed to represent reasonable rates already. The Commission should not allow itself to be taken in by the argument that the same "reasonable rate" determination should be made on both tiers. The Cable Act certainly does not require that the same per channel price be charged for both the basic tier and the cable programming tier. Benchmarks do produce a uniform per channel rate before external costs are accounted for. However, benchmarks do not contemplate uniform rates. Not only is this true because of the application of external costs but also because of the differences in timing in implementing rate changes. Moreover, even if cost-of-service showings were made by a cable operator as to all regulated tiers, there is no requirement or guarantee that the Commission and the franchising authority would arrive at the same result. The Commission has clearly stated its preference for the benchmark approach over cost-of-service. Since there are many pro-benchmark incentives already built into the process, the Commission should not require a cable operator using benchmark rates for one tier to utilize the benchmark approach for all tiers. Conversely, the Commission should not impose the burden of making a cost-of-service showing on all tiers on a cable

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[19] 47 U.S.C. § 543(b)(2)(A).

operator who would like to use the benchmark approach on other tiers.

As to coordination between the local and federal regulatory processes, Commenters suggest that where a cable operator chooses to make cost-of-service showings for all tiers, the cable operator should have the option of asking the Commission to conduct a unified proceeding. This would prevent disparate results. It would also be more efficient since the cable operator would not have to make showings in two forums and the Commission would not be asked to review the franchising authority's decision.

Finally, Commenters concur that cable operators should be able to switch between benchmarking and cost-of-service even if uniform elections are required. A six-month time limitation should be all that is imposed on election changes. Cable operators should not be locked into one approach for too long. Circumstances, strategies, technologies, financing, etc. change much too quickly.

IV. COSTS OF REQUIRED UPGRADES AND REBUILDS SHOULD BE TREATED AS EXTERNAL.

In the Third Notice, the Commission "solicit[s] comment on whether we should permit external cost treatment for costs of upgrades required by local franchise authorities."[20] As the Commission apparently recognizes, franchising authorities often require upgrades as a condition for a franchise renewal. Any

[20] Third Notice at ¶ 153 (footnote omitted).

cable operator which desires to have its franchise renewed in this situation is forced to agree to undertake such an upgrade. Accordingly, as the Commission appropriately recognizes, allowing external treatment of the costs of upgrades included as part of a franchise agreement "would be consistent with our general approach of permitting external cost treatment of costs of franchise requirements."[21]

Moreover, there are other instances under local law in which plant upgrades cannot be said to be voluntary on the part of the cable operator. For example, local or state zoning laws can require a cable operator to replace overhead plant with underground plant. Also, road widenings can force a substantial rebuild. In other words, franchise requirements are not the only vehicle for required upgrades.

Furthermore, numerous franchises contain a "state of the art" clause or similar requirement. Due to the fact that technical innovations occur so rapidly in the cable television industry, many cable operators faced with such a requirement will need to upgrade their systems during the franchise term in order to avoid noncompliance, and indeed it is likely that this is precisely the result many franchising authorities desire. Accordingly, even if the franchise does not explicitly call for an upgrade, such upgrade is implicitly required by most franchises requiring "state of the art" cable systems. Again,

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[21]Third Notice at ¶ 153.

therefore, the cable operator should be able to accord external cost treatment to such upgrade.

Franchising authorities could also potentially deny a franchise renewal for poor customer service or poor signal quality. Section 632 of the 1992 Cable Act provides that franchising authorities may establish and enforce customer service requirements against cable operators.[22] Thus, it appears that franchising authorities can impose plant-related customer service requirements and deny renewal if such requirements are not met. The cable operator may be forced to undertake an upgrade pursuant to the franchising authority's customer service requirements. As is the case with the other examples listed above, the cable operator is in no position to refuse to undertake the upgrade, unless it desires to have its franchise revoked or renewal denied. Therefore, external cost treatment of the required upgrade is wholly appropriate in this case.

In addition to these local involuntary upgrades, there ar federal laws which can require an upgrade. For instance, many plant upgrades will need to be undertaken over the next ten years as a result of the 1992 Cable Act's requirement that cable systems become addressable in order to meet the Act's anti-buy-through provisions.[23] Likewise, imposition of the Commission's new technical standards will cause many cable systems to be

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[22]47 U.S.C. § 542(a)(1).

[23]47 U.S.C. § 543(b)(8).

rebuilt.[24] Accordingly, any upgrades to make cable systems compliant with Commission technical standards or to make them addressable, even if not specifically called for in a franchise agreement, must be considered required by the Cable Act and should be given external cost treatment.

Once it is determined that cable plant upgrades in the aforementioned situations should be permitted external cost treatment, it remains to be decided how such costs should be passed through. The Commenters believe that the unique economics regarding cable television plant should dictate such cost treatment. In this regard, cable plant must be distinguished from telephone ("telco") industry plant. The fundamental characteristics of telco plant have not changed in approximately fifty years. If a telco installs copper wire and other plant components, there is generally no need to replace them until the end of their useful lives. However, the cable industry has undergone several technological revolutions. For instance, since approximately 1980 the standard for cable system channel capacity expressed in terms of bandwidth has increased from 330 MHz, to 440 MHz, to 500 MHz, and may soon approach 1000 MHz. Such developments require different amplifiers and other equipment changes. There has also been a widespread move in the cable industry from coaxial cable to fiber.[25] This change is in large

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[24]47 C.F.R. § 76.605.

[25]See, e.g., George Gilder, "Cable's Secret Weapon," Forbes, April 13, 1992, at 81.

part a response to technological demands for more channel capacity, etc., and requires replacement of coaxial cable before the useful life of most systems' coaxial cable has ended. Accordingly, cable operators should be able to amortize the cost of required plant upgrades over a period shorter than the useful lives of such upgrades.[26]

Continuing technological developments will also undoubtedly create pressure for cable plant upgrades. For instance, video compression, which will allow multiple video signals to be carried on one channel and which will thus vastly increase current cable capacity,[27] could require massive changeouts of converter boxes, headend equipment, etc. Likewise, the advent of high definition television could require widespread upgrades. If cable operators are forced to amortize the cost of equipment over its entire useful life, without accounting for obsolescence due to technological changes, they will have no incentive to replace older equipment and undertake upgrades before such useful life has expired. Such a result would directly conflict with the 1992 Cable Act's goal of "ensur[ing] that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems."[28] Without the cost treatment outlined above, it simply will never be "economically

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[26]See Section II, supra.

[27]See, e.g., Adriel Bettelheim, "New Age Video Via Cable," Baltimore Sun, March 29, 1992.

[28]1992 Cable Act at § 2(b)(3).

justified" for a cable operator to undertake desired upgrades. Accordingly, cable operators should be able to fully capture the benefits of new technological developments, and pass on such benefits as soon as possible to subscribers, by having the appropriate incentives to undertake the plant upgrades necessary to incorporate such developments into their cable systems.

CONCLUSION

Commenters urge the Commission, as it resolves the issue raised in the Third Notice, to keep in mind that the Cable Act contains policies to encourage cable operators to invest in new services and technologies as well as to see that rates charged to subscribers remain reasonable. A balance must be struck which gives cable operators the incentive to continue to develop and grow in service to the public.

Respectfully submitted,

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